



S.A.(MD) No.144 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 20.09.2024

CORAM

THE HONOURABLE Ms.JUSTICE **P.T.ASHA**

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T.Kulandaisamy Servai

... Appellant

VS.

1.Alagammal

2.Andhonimuthu (died)

3.Periyanayagathammal

4.Innasiammal

5.Francis Mary

6.Amutha Josphine

7.Stella Rose Mary

8.Viyagulamary Alias Rani

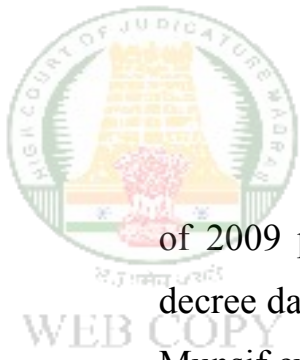
9.Jenitha

10.Bengar Arockiya Raj

*(R4 to R10 have been impleaded vide
order dated 16.08.2024)*

...Respondents

Prayer:- Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 29.08.2011 in A.S.No.89



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of 2009 passed by the Sub Court, Pudukkottai confirming the judgment and decree dated 21.08.2009 in O.S.No.25 of 2005 on the file of the learned District Munsif cum Judicial Magistrate, Keeranur.

For Appellant : Mr.K.Balasundaram

For R1 : No appearance

For R2 & R3 : Died

For R4 to R10 : Mr.N.Tamilmani

JUDGMENT

The plaintiff, who has unsuccessfully contested the suit O.S.No.25 of 2005 on the file of the learned District Munsif cum Judicial Magistrate, Keeranur, is the appellant before this Court and for the ease of understanding while narrating the facts, the parties are referred to in the same ranking as before the trial Court.

2. Pending the appeal, the second respondent/second defendant had passed away and his legal representatives have been brought on record as respondents 4 to 10 in the above second appeal. Likewise, the third defendant, namely Periyannayagathammal, had passed away pending the second appeal on 19.04.2019. Her husband, Pitchai Udaiyar and his son had predeceased her and therefore, Periyannayagathammal had no legal heirs. The second respondent had got a right to the suit property from Periyannayagathammal and he had sold the



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same to the first respondent. Therefore, there is no necessity to bring on record the legal representatives of the deceased Periyamayagathammal.

PLAINTIFF'S CASE:

3. The plaintiff had filed the above suit for declaration and permanent injunction or in the alternative for recovery of possession of the suit property from the defendants. It is the case of the plaintiff that the suit property was his ancestral property. In the resettlement proceedings in the year 1964-65, patta was granted in his favour and the patta passbook was also issued to him in the year 1984.

3.1. While so, the defendants managed and manipulated to get the patta in their favour without notice to the plaintiff. Now, the defendants armed with this patta are attempting to alienate the property and interfering with the plaintiff's peaceful possession and enjoyment of the same. In fact on 16.02.2005, the first defendant had attempted to interfere with the plaintiff's possession stating that he had purchased the property. Therefore, the plaintiff has come forward with the suit in question.



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WRITTEN STATEMENT OF THE SECOND DEFENDANT:-

4. The second defendant had filed a written statement, which is adopted by the other defendants. The defendants had *inter alia* denied the plaintiff's claim and his possession over the same. It was their case that the suit property belonged to one Arockia Udayar by way of purchase and after his death, his legal representatives had succeeded to the property. They had in turn had sold the same to the first defendant. These facts are well known to the plaintiff.

4.1. The suit property was purchased by Arockia Udayar on 27.01.1942, in which he was living jointly with his father, Visvasa Udayar and brother, Savarimuthu Udayar. In the family partition, the suit property was allotted to the share of Savarimuthu Udayar. Savarimuthu Udayar's son was one Visvasam and the third defendant, Periyanaagathammal is his wife. Arulnandhu is the son of Visvasam and Periyanaagathammal and he had married one Innasiammal and he died within 8 months of marriage. Thereafter, the said Innasiammal had married the second defendant, Andhonimuthu. Hence, the suit property belonged to the third defendant by succession and after her, the second defendant succeeded to the property and in turn had sold the same to the first defendant. The property over which the plaintiff claims title and the suit property are different.



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4.2. The defendants would further submit that since the properties are their ancestral properties and they have been in open continuous and hostile possession of the same, they had acquired title by way of adverse possession as well. Therefore, the sale deed executed in favour of the first defendant was a valid one. They therefore sought for dismissal of the suit and contended that the plaintiff was never in possession and enjoyment of the suit property and the cause of action for the suit was therefore false.

TRIAL COURT:

5. The trial Court had framed the following issues:

"1. Whether the plaintiff is the absolute owner of the suit property?

2. Whether the plaintiff is in possession and enjoyment of the suit property?

3. Whether the plaintiff is entitled to a decree for declaration of title as prayed for?

4. Whether the plaintiff is entitled to a decree for permanent injunction?

5. Whether the plaintiff is entitled to the alternate relief of



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recovery of possession?

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6. *To what other relief?"*

6. To prove his case, the plaintiff had examined himself as P.W1 and two others as P.W2 and P.W3 and Ex.A1 to Ex.A6 were marked. On the side of the defendants, the second defendant, Andhonimuthu had examined himself as D.W1 and he had examined one Periyamayagam and Durai @ Arockyasamy as D.W2 and D.W3 respectively and marked Ex.P1 to Ex.P4.

7. The trial Court had returned a finding that the plaintiff through the oral and documentary evidence had proved that he is the owner of the suit property. However, with reference to the issue as to whether the plaintiff was in possession of the suit property, thereby entitled to permanent injunction, the trial Court had only declared that he is the owner of the property. Since the defendants had set out a plea of adverse possession and had proved their continuous possession of the same, the Courts below returned a finding that the plaintiff was not entitled to declaration, as the evidence produced by the plaintiff would clearly show that from the grant of Ex.P2, the patta in favour of the third defendant, the suit has come to be filed 18 years later. Therefore, the suit was also barred by limitation and the defendants had acquired title by way



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of adverse possession. The Courts therefore rejected the plaintiff's plea for possession as well as injunction.

APPELLATE COURT:

8. Aggrieved by the said judgment and decree, the plaintiff had preferred an appeal in A.S.No.89 of 2009 on the file of Sub Court, Pudukkottai. The appellate Court also confirmed the judgment and decree of the trial Court.

SECOND APPEAL:

9. Challenging the said judgment, the appellant is before this Court. The second appeal has been admitted on the following substantial questions of law:-

"a) Whether the plaintiff is entitled to a decree of perpetual injunction on the a principle of title follows possession when title is proved within the meaning of Section 38 of Specific Relief Act, 1963?

(b) Whether the plaintiff is entitled to decree of declaration when the plea of adverse possession has not been proved by the plaintiff within the meaning of Section 65 of Limitation Act, 1963?

(c) Whether the patta granted in settlement proceedings is a document of titled or not?"



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10. Heard the learned counsel on either side.

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DISCUSSION:

11. At the outset, the learned counsel for the plaintiff would submit that the Courts below have erred in declaring the title of the defendants, since there was no pleadings for adverse possession. However, a perusal of the written statement filed by the defendants particularly para 8 would clearly show that the plea of adverse possession has been taken by the defendants, wherein he has stated as follows:-

"8.தாவா சொத்தை வெளிப்படையாகவும் எவ்விதமான இடையூறு இன்றியும் தொடர்ச்சியாக வாதிகளுக்கு தெரிந்தே இந்த 2,3 பிரதிவாதிகள் முன்னோர்கள் மற்றும் 2,3 பிரதிவாதிகள் அனுபவம் செய்து வருகின்றனர். வாதி தாக்கல் செய்துள்ள தவறான வருவாய் ஆவனங்களில் ஏற்பட்ட பதிவு காரணமாக ஏதேனும் உரிமை ஏற்பட்டிருந்தாலும் சட்ட காலத்திற்கு மேலாக இந்த 1,2 பிரதிவாதிகளின் அனுபவத்தில் தாவா சொத்து இருந்து வருவதால் வாதிக்கு உள்ள உரிமை அற்று போய் 1,2 பிரதிவாதிகளுக்கு எதிருடைமை பாத்தியம் மூலம் தாவா சொத்து சட்டப்படி உரிமை ஏற்பட்டுவிட்டது. எனவே 2,3 பிரதிவாதிகளுக்கு சட்டப்படி உரிமை ஏற்பட்ட சொத்தை 1-ம் பிரதிவாதி கிரையம் பெற்றுள்ளார். மேற்படி கிரையமும் சட்டப்படி



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செல்லக்கடியதே."

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12. Therefore, this contention cannot be countenanced. The trial Court has extensively considered the issue as to whether the plaintiff was entitled to a decree for declaration and injunction or in the alternative permanent injunction and had come to the conclusion that the evidence available on record shows that the third defendant and her predecessor in title have been in possession and enjoyment of the suit property for over the statutory period and therefore, they had acquired title over the same by way of adverse possession.

13. The plaintiff apart from producing Ex.A1 to Ex.A5 had not produced any documents to show their possession of the suit property. The trial Court had answered the first issue in favour of the plaintiff by stating that he is the owner of the property, but however considering the long possession of the defendants for over the statutory period and the plea for adverse possession taken by them, the Courts below came to the conclusion that they had perfected title by adverse possession. Since the title of the defendants by adverse possession has been declared, the relief claimed could not be granted. Another factor, which has to be borne in mind, is that the suit had been filed in respect of the following property:-



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"சொத்து விபரம்

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புதுக்கோட்டை மாவட்டம், குளத்தூர் தாலுகா

ஆம்பூர்பட்டி வட்டம். ஆம்பூர் பட்டி கிராமத்தில் சர்வே எண்.

314/11 ல் கட்டுப்பட்ட புஞ்சை ஏர்ஸ் 0.06.5 க்கு சென்று

16"

14. The suit property has not been defined by boundaries and this assumes significance, since the suit is one for declaration as well as for recovery of possession. Therefore, the suit property has to be well defined within the four boundaries in order to execute the said decree. The property in question has not been proved to be a vacant site in order to adopt the principle the title follows possession. In the case on hand, the defendants have produced the documents from the year 1942, namely the original sale deed, the patta and tax receipts etc., Therefore, the substantial questions of law (a) and (b) are answered against the plaintiff.

15. The defendants have not only produced the patta but also produced the original sale deed dated 27.01.1942, which has not been refuted by the plaintiff. Therefore, while weighing a patta against the document of title, the document of title would definitely take predominance and the patta is not the



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document of title and therefore, the substantial question of law (c) is answered against the plaintiff.

16. In the result, this Second Appeal stands dismissed. The judgment and decree dated 29.08.2011 in A.S.No.89 of 2009 passed by the Sub Court, Pudukkottai confirming the judgment and decree dated 21.08.2009 in O.S.No. 25 of 2005 on the file of the learned District Munsif cum Judicial Magistrate, Keeranur is confirmed. No costs.

Index : Yes / No
Internet : Yes/ No

20.09.2024

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To

- 1.The Sub Judge,
Pudukkottai.
- 2.The District Munsif cum Judicial Magistrate,
Keeranur.
- 3.The Section Officer, (2 copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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P.T.ASHA, J.

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